

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0101P

Withholding Tax

Calendar Year 2001 and the Months of January Through May 2002 and July 2002

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on the date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1; 45 IAC 15-11-2

The taxpayer protests the penalties assessed for failure to file an annual reconciliation and monthly returns in a timely manner.

STATEMENT OF FACTS

The taxpayer is a corporation that operates a not-for-profit school. The taxpayer filed the following documents after their respective due dates:

- Annual withholding reconciliation (WH-3) for 2001
- Indiana Employer's Withholding Tax Returns (WH-1s) for these months of 2002: January through May and July

Accordingly, the Department assessed a penalty on each of these documents. In its letter of protest, the taxpayer requested that the penalties be abated due to reasonable cause.

I. Tax Administration – Penalty

In its letter of protest, the taxpayer requests that the penalties be waived because it experienced a change in personnel. In January 2002, the taxpayer's accountant resigned from her position. The director of the school assumed the accounting function.

At about the same time, an independent accountant commenced an audit of the school. The independent accountant retained custody of the taxpayer's financial records until July 2002. Without these records, the director did not have the information required to file returns and remit taxes. The present treasurer of the taxpayer assumed that position in September 2002.

Administrative Rule 45 IAC 15-11-2 (b) states the following:

“Negligence” on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department notes that the taxpayer's filing record since September 2002 has improved. As commendable as that is, however, in determining negligence, the Department must evaluate the taxpayer's filing behavior during the period under review. The Department acknowledges the confusion created by the loss of vital personnel and the performance of an audit by an independent accountant. However, the possibility of such events should have been anticipated by the taxpayer; procedures should have been in place to assure that tax obligations were timely met.

FINDING

The taxpayer's protest is denied.